

08 C 1040

Case 1:08-cv-01040 Document 1-3 Filed 02/20/2008 Page 1 of 14

JUDGE ZAGEL
MAGISTRATE JUDGE DENLOW

EXHIBIT B

STATE OF ILLINOIS)
)
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

LISA STANTON,)
)
Plaintiff,)
)
v.)
)
CONAGRA FOODS, INC.)
)
Defendant.)

No.

2008L000132
CALENDAR/RGD
TIME 0050P
Product 132
JAN - 7 AM 11:28
Court of Cook County, Illinois
Law Division
CLERK

COMPLAINT AT LAW

Count I – Negligence

NOW COMES Plaintiff, LISA STANTON, by and through her attorneys in this regard, HUNT, KAISER, ARANDA & SUBACH, LTD., and as Count I of her Complaint at Law against Defendant CONAGRA FOODS, INC., she states as follows:

1. On and before February 1, 2007, Defendant CONAGRA FOODS, INC. was an Illinois corporation that owned, managed and operated a peanut butter manufacturing plant in the State of Georgia.
2. Prior to February 1, 2007, Defendant CONAGRA FOODS, INC. produced "Peter Pan Reduced Fat Crunchy Peanut Butter" at its Georgia manufacturing facility.
3. Prior to February 1, 2007, the "Peter Pan Reduced Fat Crunchy Peanut Butter" was labeled with product code "2111."

4. Prior to February 1, 2007, the "Peter Pan Reduced Fat Crunchy Peanut Butter" with product code "2111" was contaminated with *Salmonella* and was therefore in a condition unfit for human consumption.

5. Prior to February 1, 2007, Defendant CONAGRA FOODS, INC. placed the contaminated "Peter Pan Reduced Fat Crunchy Peanut Butter" in retail stores in Chicago and throughout the surrounding Chicagoland area, including Normal, Illinois.

6. Prior to February 1, 2007, Plaintiff, LISA STANTON, purchased the "Peter Pan Reduced Fat Crunchy Peanut Butter" in the City of Normal, County of McLean, State of Illinois.

7. On or about February 1, 2007, Plaintiff, LISA STANTON, consumed the aforementioned "Peter Pan Reduced Fat Crunchy Peanut Butter" in the City of Normal, County of McLean, State of Illinois.

8. On or about February 1, 2007, Plaintiff became violently ill with headaches, vomiting, body aches, severe abdominal pain, and bloody diarrhea.

9. The Department of Health and Human Services Centers for Disease Control and Prevention determined that the "Peter Pan Reduced Fat Crunchy Peanut Butter" manufactured by the Defendant with product code "2111" was contaminated with *Salmonella*.

10. On March 1, 2007, the U.S. Food and Drug Administration issued a press release stating that Defendant CONAGRA FOODS, INC. was recalling all Peter Pan peanut butter with product code 2111 due to the presence of *Salmonella*. See Exhibit A.

11. Defendant owed the plaintiff a duty to manufacture and/or distribute foods that were suitable for human consumption.

12. On and or about February 1, 2007, Defendant CONAGRA FOODS, INC. was negligent for one or more of the following reasons:

- a). Manufactured, produced and/or sold food contaminated with Salmonella bacteria;
- b). Failed to comply with food safety standards;
- c). Failed to adequately train and supervise the manufacturing staff and employees;
- d). Was otherwise careless and negligent in the preparation and distribution of the food consumed by the Plaintiff.

13. As a proximate result of one or more of the foregoing acts or omission by Defendant CONAGRA FOODS, INC., Plaintiff suffered injuries of a personal and pecuniary nature.

WHEREFORE, Plaintiff, LISA STANTON, prays for judgment against the Defendant CONAGRA FOODS, INC., and seeks damages in excess of FIFTY THOUSAND DOLLARS (\$50,000.00) plus costs.

Count II – Strict Liability/Contaminated Food

NOW COMES Plaintiff, LISA STANTON, by and through her attorneys in this regard, HUNT, KAISER, ARANDA & SUBACH, LTD., and as Count II of her Complaint at Law against Defendant CONAGRA FOODS, INC., she states as follows:

1. On and before February 1, 2007, Defendant CONAGRA FOODS, INC. was an Illinois corporation that owned, managed and operated a peanut butter manufacturing plant in the State of Georgia.

2. Prior to February 1, 2007, Defendant CONAGRA FOODS, INC. produced "Peter Pan Reduced Fat Crunchy Peanut Butter" at its Georgia manufacturing facility.

3. Prior to February 1, 2007, the "Peter Pan Reduced Fat Crunchy Peanut Butter" was labeled with product code "2111."

4. Prior to February 1, 2007, the "Peter Pan Reduced Fat Crunchy Peanut Butter" with product code "2111" was contaminated with *Salmonella* and was therefore in a condition unfit for human consumption.

5. Prior to February 1, 2007, Defendant CONAGRA FOODS, INC. placed the contaminated "Peter Pan Reduced Fat Crunchy Peanut Butter" in retail stores in Chicago and throughout the surrounding Chicagoland area, including Normal, Illinois.

6. Prior to February 1, 2007, Plaintiff, LISA STANTON, purchased the "Peter Pan Reduced Fat Crunchy Peanut Butter" in the City of Normal, County of McLean, State of Illinois.

7. On or about February 1, 2007, Plaintiff, LISA STANTON, consumed the aforementioned "Peter Pan Reduced Fat Crunchy Peanut Butter" in the City of Normal, County of McLean, State of Illinois.

8. On or about February 1, 2007, Plaintiff became violently ill with headaches, vomiting, body aches, severe abdominal pain, and bloody diarrhea.

9. The Department of Health and Human Services Centers for Disease Control and Prevention determined that the "Peter Pan Reduced Fat Crunchy Peanut Butter" manufactured by the Defendant with product code "2111" was contaminated with *Salmonella*.

10. On March 1, 2007, the U.S. Food and Drug Administration issued a press release stating that Defendant CONAGRA FOODS, INC. was recalling all Peter Pan peanut butter with product code 2111 due to the presence of *Salmonella*. See Exhibit A.

11. *Salmonella* is an unreasonably dangerous condition in a food product.

12. As a proximate result of one or more of the foregoing acts or omission by Defendant CONAGRA FOODS, INC., Plaintiff suffered injuries of a personal and pecuniary nature.

WHEREFORE, LISA STANTON, prays for judgment against the Defendant CONAGRA FOODS, INC. and seeks damages in excess of FIFTY THOUSAND DOLLARS (\$50,000.00) plus costs.

Count III – Breach of Implied Warranty/Contaminated Food

NOW COMES Plaintiff, LISA STANTON, by and through her attorneys in this regard, HUNT, KAISER, ARANDA & SUBACH, LTD., and as Count III of her Complaint at Law against Defendant CONAGRA FOODS, INC., she states as follows:

1. On and before February 1, 2007, Defendant CONAGRA FOODS, INC. was an Illinois corporation that owned, managed and operated a peanut butter manufacturing plant in the State of Georgia.
2. Prior to February 1, 2007, Defendant CONAGRA FOODS, INC. produced "Peter Pan Reduced Fat Crunchy Peanut Butter" at its Georgia manufacturing facility.
3. Prior to February 1, 2007, the "Peter Pan Reduced Fat Crunchy Peanut Butter" was labeled with product code "2111."
4. Prior to February 1, 2007, the "Peter Pan Reduced Fat Crunchy Peanut Butter" with product code "2111" was contaminated with Salmonella and was therefore in a condition unfit for human consumption.
5. Prior to February 1, 2007, Defendant CONAGRA FOODS, INC. placed the contaminated "Peter Pan Reduced Fat Crunchy Peanut Butter" in retail stores in Chicago and throughout the surrounding Chicagoland area, including Normal, Illinois.
6. Prior to February 1, 2007, Plaintiff, LISA STANTON, purchased the "Peter Pan Reduced Fat Crunchy Peanut Butter" in the City of Normal, County of McLean, State of Illinois.

7. On or about February 1, 2007, Plaintiff, LISA STANTON, consumed the aforementioned "Peter Pan Reduced Fat Crunchy Peanut Butter" in the City of Normal, County of McLean, State of Illinois.

8. On or about February 1, 2007, Plaintiff became violently ill with headaches, vomiting, body aches, severe abdominal pain, and bloody diarrhea.

9. The Department of Health and Human Services Centers for Disease Control and Prevention determined that the "Peter Pan Reduced Fat Crunchy Peanut Butter" manufactured by the Defendant with product code "2111" was contaminated with *Salmonella*.

10. On March 1, 2007, the U.S. Food and Drug Administration issued a press release stating that Defendant CONAGRA FOODS, INC. was recalling all Peter Pan peanut butter with product code 2111 due to the presence of *Salmonella*. See Exhibit A.

11. On or about February 1, 2007, Defendant CONAGRA FOODS, INC. breached their implied warranty of fitness and merchantability, in violation of Illinois Complied Statutes, 2004, Chapter 810, Section 5/2-315; in one or more of the following ways:

- a). The Defendant produced and/or sold food contaminated with *Salmonella* bacteria;
- b). Failed to properly handle the food and its packaging to prevent the spread and growth of *Salmonella* bacteria;
- c). Failed to maintain proper hygienic conditions at its manufacturing facility to prevent the spread and growth of *Salmonella* bacteria;
- d). Failed to adequately train and supervise the manufacturing staff, chefs, and employees;
- e). Failed to warn employees to properly wash their hands, surfaces, packaging and utensils to prevent the spread and growth of *Salmonella* bacteria;
- f). Were otherwise careless and negligent in the preparation and distribution of the food consumed by Plaintiff.

12. As a proximate result of being provided and eating food from CONAGRA FOODS, INC., LISA STANTON contracted Salmonella poisoning and suffered injuries of a personal and pecuniary nature.

WHEREFORE, Plaintiff, LISA STANTON, prays for judgment against the Defendant CONAGRA FOODS, INC. and seeks damages in excess of FIFTY THOUSAND DOLLARS (\$50,000.00) plus costs.

Count IV – Res Ipsi Loquitur

NOW COMES Plaintiff, LISA STANTON, by and through her attorneys in this regard, HUNT, KAISER, ARANDA & SUBACH, LTD., and as Count IV of her Complaint at Law against Defendant CONAGRA FOODS, INC., she states as follows:

1. On and before February 1, 2007, Defendant CONAGRA FOODS, INC. was an Illinois corporation that owned, managed and operated a peanut butter manufacturing plant in the State of Georgia.
2. Prior to February 1, 2007, Defendant CONAGRA FOODS, INC. produced "Peter Pan Reduced Fat Crunchy Peanut Butter" at its Georgia manufacturing facility.
3. Prior to February 1, 2007, the "Peter Pan Reduced Fat Crunchy Peanut Butter" was labeled with product code "2111."
4. Prior to February 1, 2007, the "Peter Pan Reduced Fat Crunchy Peanut Butter" with product code "2111" was contaminated with Salmonella and was therefore in a condition unfit for human consumption.
5. Prior to February 1, 2007, Defendant CONAGRA FOODS, INC. placed the contaminated "Peter Pan Reduced Fat Crunchy Peanut Butter" in retail stores in Chicago and throughout the surrounding Chicagoland area, including Normal, Illinois.

6. Prior to February 1, 2007, Plaintiff, LISA STANTON, purchased the "Peter Pan Reduced Fat Crunchy Peanut Butter" in the City of Normal, County of McLean, State of Illinois.

7. On or about February 1, 2007, Plaintiff, LISA STANTON, consumed the aforementioned "Peter Pan Reduced Fat Crunchy Peanut Butter" in the City of Normal, County of McLean, State of Illinois.

8. On or about February 1, 2007, Plaintiff became violently ill with headaches, vomiting, body aches, severe abdominal pain, and bloody diarrhea.

9. The Department of Health and Human Services Centers for Disease Control and Prevention determined that the "Peter Pan Reduced Fat Crunchy Peanut Butter" manufactured by the Defendant with product code "2111" was contaminated with *Salmonella*.

10. On March 1, 2007, the U.S. Food and Drug Administration issued a press release stating that Defendant CONAGRA FOODS, INC. was recalling all Peter Pan peanut butter with product code 2111 due to the presence of *Salmonella*. See Exhibit A.

11. At all relevant times, the peanut butter and its container were in the exclusive control of the defendant.

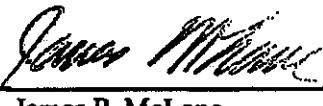
12. As a proximate result of one or more of the foregoing acts or omission by Defendant CONAGRA FOODS, INC., Plaintiff suffered injuries of a personal and pecuniary nature.

WHEREFORE, Plaintiff, LISA STANTON, prays for judgment against the Defendant CONAGRA FOODS, INC. and seeks damages in excess of FIFTY THOUSAND DOLLARS (\$50,000.00) plus costs.

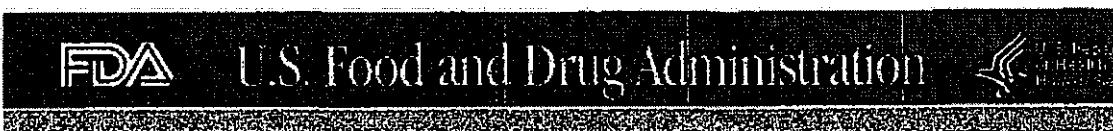
Respectfully submitted,

HUNT, KAISER, ARANDA & SUBACH, LTD.

By: _____


James P. McLane
Attorney for Plaintiff

HUNT, KAISER, ARANDA & SUBACH, LTD.
Attorneys At Law
1035 South York Road
Bensenville, IL 60106
(630) 860-7800
Atty. No.: 15213



FDA News

FOR IMMEDIATE RELEASE
P07-32
March 1, 2007

Media Inquiries:
 Michael Herndon, 301-827-6242
Consumer Inquiries:
 888-INFO-FDA

FDA Update on Peanut Butter Recall

Salmonella found in the ConAgra Plant

As a follow-up to the recent Salmonella outbreak linked to peanut butter, the U.S. Food and Drug Administration (FDA) is conducting an extensive inspection of ConAgra's Sylvester, Georgia processing plant. Samples collected by the FDA revealed the presence of Salmonella. The fact that FDA found Salmonella in the plant environment further suggests that the contamination likely took place prior to the product reaching consumers. Last week, tests by several states identified Salmonella in many open jars of Peter Pan and Great Value peanut butter recovered from consumers. In these instances, the Salmonella found in the plant and in the open jars matched the outbreak strain recovered from consumers who became ill.

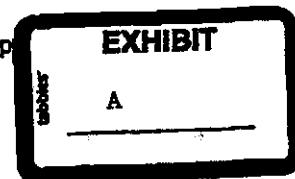
Peanut Butter Toppings Part of Recall

FDA has learned that the ConAgra plant in Sylvester, GA, sent bulk Peter Pan peanut butter to its plant in Humboldt, TN. The three brands described below are part of the original Peter Pan recall. These brands have been recalled and are no longer being sold. However, some consumers may still have these products in their home.

Consumers who have any of the products listed below should discard them. Individuals who are not sure if the purchased product contains the recalled peanut butter topping should contact the store where the product was purchased.

The bulk peanut butter was used to make the following toppings:

- Sonic Brand Ready-To-Use Peanut Butter Topping in 6 lb. 10.5 oz cans. Sonic outlets used the topping until 2/16/07, when the product was recalled.
 The topping was used in the following Sonic products:
 - Peanut Butter Shake
 - Peanut Butter Fudge Shake
 - Peanut Butter Sundae
 - Peanut Butter Fudge Sundae
- Carvel Peanut Butter Topping in 6 lb. 10 oz. cans. Carvel used the topping until 2/16/07, when the product was recalled.
 The topping was used in the following Carvel ice cream products:
 - Chocolate Peanut Butter
 - Peanut Butter Treasure
 - Peanut Butter & Jelly
 - Reese's Peanut Butter Cup Sundae Dasher
 - Any other customized products containing the Peanut Butter Topping, including p



FDA Update on Peanut Butter Recall

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butter flavored ice cream in ice cream cakes

- J. Hungerford Smith Peanut Butter Dessert Topping in 6 lb. 10 oz. cans: This topping may be used by retail and restaurant outlets throughout the United States but is not available for direct purchase by the public.

Recall Status and More Information

ConAgra informed the public that it is recalling all Peter Pan peanut butter and all Great Value peanut butter beginning with product code 2111. The company's recall extends to products made since December 2005. FDA's advice to consumers continues to be not to eat any Peter Pan peanut butter or any Great Value peanut butter beginning with the 2111 product code.

FDA will provide updates on recalled products, including any other products that may have been made with potentially contaminated peanut butter and distributed to consumers.

Symptoms of foodborne illness caused by Salmonella include fever, diarrhea and abdominal cramps. In persons with poor underlying health or weakened immune systems, Salmonella can invade the bloodstream and cause life-threatening infections or death. Individuals who have recently eaten peanut butter-containing products from these companies and who have experienced any of these symptoms should contact their doctor or health care provider immediately and report the illnesses to their state or local health authorities. Similarly, institutional food establishments and other food service providers who have received reports of illness from consumers after they consumed a product containing this peanut butter are encouraged to share that information with their local health department.

FDA is continuing to work closely with the Centers for Disease Control and Prevention, and with states and local officials to identify how the contamination occurred in order to prevent similar foodborne illness outbreaks.

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Additional Information

[Q and A - Peter Pan & Great Value Peanut Butter Salmonella Outbreak and Product Recall](#)

[February 23, 2007 – FDA Update on Salmonella Outbreak Linked to All Peter Pan Peanut Butter and Certain Lot Numbers of Great Value Brand Peanut Butter](#)

[February 16, 2007 – Update on Salmonella Outbreak and Peter Pan Peanut Butter and Great Value Peanut Butter](#)

[February 14, 2007 - FDA Warns Consumers Not to Eat Certain Jars of Peter Pan Peanut Butter and Great Value Peanut Butter – Product May be Contaminated With Salmonella](#)

[CDC Salmonellosis - Outbreak Investigation, February 2007](#)

[Photos: Peter Pan and Great Value Peanut Butter](#)

[FDA's Pilot Program to Better Educate Consumers about Recalled Food Products](#)

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FDA Website Management Staff

STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

LISA STANTON,)
)
)
Plaintiff,)
)
)
v.) No.
)
CONAGRA FOODS, INC.)
)
Defendant.)

AFFIDAVIT OF DAMAGES
SUPREME COURT RULE 222

The undersigned being first duly sworn upon oath, deposes and states that he is the attorney for the Plaintiff to the above entitled cause of action and is seeking money damages for this cause of action in the amount listed below:

 does not exceed \$50,000.00

X does exceed \$50,000.00


James P. McLane, as Attorney for Plaintiff

HUNT, KAISER, ARANDA & SUBACH, LTD.
1035 S. York Road
Bensenville, Illinois 60106
(630) 860-7800
Atty. No.: 15213